

STATE OF NEW YORK
SUPREME COURT

COUNTY OF NEW YORK

MICHAEL B. BAUMANN

Plaintiff,

SUMMONS

Index No: _____

v.

ROMAN CATHOLIC DIOCESE OF SCRANTON

Defendant.

TO THE ABOVE-NAMED DEFENDANTS:

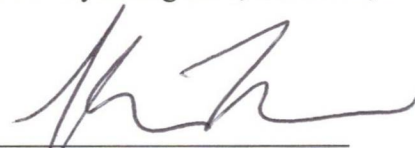
YOU ARE HEREBY SUMMONED to Answer the attached Complaint in this action and to serve upon Plaintiff's attorneys a copy of your Answer, or, if the Complaint is not served with this Summons, to serve a notice of appearance, on the Plaintiffs' attorneys within twenty (20) days after the service of this Summons, exclusive of the day of service, or within thirty (30) days after the service is complete if this Summons is not personally delivered to you within the State of New York.

PLEASE TAKE NOTICE in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

DEFENDANT'S ADDRESS:

ROMAN CATHOLIC DIOCESE OF SCRANTON 300 Wyoming Ave, Scranton, PA 18503

Dated: August 26, 2019
New York, New York



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Attorneys for Plaintiffs

STATE OF NEW YORK
SUPREME COURT

COUNTY OF NEW YORK

MICHAEL B. BAUMANN

Plaintiff,

v.

ROMAN CATHOLIC DIOCESE OF SCRANTON

Defendant.

VERIFIED COMPLAINT
JURY TRIAL DEMANDED

Index No: _____

Plaintiff, Michael B. Baumann ("Plaintiff"), by and through his attorneys, Thomas LaBarbera Counselors At Law and Andreozzi & Associates, P.C., as and for their Complaint in this matter against defendant Roman Catholic Diocese of Scranton ("Defendant"), hereby alleges as follows:

Nature of the Action

1. Plaintiff brings this action against Defendant pursuant to New York's Child Victims Act ("CVA") (N.Y. C.P.L.R. § 214-g).

Parties

2. Defendant Roman Catholic Diocese of Scranton ("Diocese" or "Scranton Diocese") is a Roman Catholic diocese located at 330 Wyoming Ave, Scranton, PA 18503.

3. The Scranton Diocese serves Lackawanna, Luzerne, Bradford, Susquehanna, Wayne, Tioga, Sullivan, Wyoming, Lycoming, Pike, and Monroe counties, all in the northeastern part of Pennsylvania; of these, Pike, Wayne, Susquehanna, Bradford, and Tioga Counties border New York state.

4. At all relevant times, the Diocese created, oversaw, managed, controlled, directed and operated parishes and/or churches of the Diocese.

5. At all relevant times, the Diocese oversaw, managed, controlled, and directed all priests assigned to work in parishes and/or churches of the Diocese, including Father Robert J. Gibson.

6. Plaintiff Michael B. Baumann is an adult resident of Virginia.

Jurisdiction and Venue

7. This Court has personal jurisdiction over the Defendant pursuant to NY CPLR § 302(a), in that the Diocese:

- a. Transacts business within New York or contracts anywhere to supply goods or services in New York. Upon information and belief, such contacts include, but are not limited to, Diocesan parishioners who reside in New York and regularly cross into Pennsylvania to attend Diocesan parishes, events, and donate to the Diocese and its parishes; Diocesan activities, trips, and retreats in New York; Diocesan clergy traveling into New York on Diocesan business; and, the transfer of Diocesan clergy between Pennsylvania and New York.
- b. Committed a tortious act within New York, in that the Diocese allowed known Diocesan clergy abusers, including Father Gibson, to minister in New York and take children to New York where children were sexually abused;
- c. Committed a tortious act without New York causing injury to the Plaintiff in New York, in that the Diocese allowed Gibson, a child abuser, access to Plaintiff including during a trip to New York City where Plaintiff was abused; and,
- d. Owned/owns, used/uses, and/or possessed/possesses real property situated within New York.

8. A small example of the Scranton Diocese's cross-border contacts with New York in recent years include, but are not limited to:

- a. The Diocese's St. Joseph's Parish, located in Matamoros, Pennsylvania, less than a mile from New York state, has a Pastoral Council with 11 members; of those, 4 reside in New York.
- b. The Diocese's St. Ann's Parish in Shohala, Pennsylvania participated in a 2016 charity walk for hunger that began in Eldred, New York, and ended at the Parish in Pennsylvania.

- c. In December 2015, the Diocese's St. Ann's Parish Youth Group from Shohala, Pennsylvania, went to New York City for a Youth Ministry Retreat at St Peter's Cathedral and Radio City Music Hall.
9. The Scranton Diocese's relevant contacts with New York also involve the transfer of abuser clergy between the Diocese and New York, including, but not limited to, the following:
 - a. In 1988, the Scranton Diocese's Bishop determined known-clergy abuser Father Robert J. Brague should be removed to avoid undue publicity. The Chancellor of the Scranton Diocese sent a letter to the Archdiocese of New York thanking the Archdiocese for helping Brague secure an assignment in New York.
 - b. In 1990, Scranton Diocese priest-abuser Austin E. Flanagan was admitted to St. Vincent Hospital in Harrison, New York shortly after an accusation he abused two Diocese parishioners. A doctor from St. Vincent Hospital wrote to the Diocese's Bishop regarding Flanagan's treatment.
 - c. In 1995, the Scranton Diocese learned priest-abuser Father Mark T. Rossetti was accused of sexually abusing a boy. The Scranton Diocese's Review Board recommended against Rossetti's continued service in Scranton. Despite that, in 1997, the Diocese's Bishop wrote the Archdiocese of New York and asked that Rossetti work in the Archdiocese, which Rossetti did temporarily.
 - d. In 1996, the Scranton Diocese learned priest-abuser Father Albert Libertore took a young male to New York to consume alcohol. Father Libertore was later arrested in 2004 for sexually assaulting a Scranton Diocese parishioner in New York by the New York City Police.
 - e. In 1998, Father Virgil Tetherow of a New York religious order, then residing in New York, contacted Scranton Diocese's Bishop to inquire about setting up a religious community in the Diocese. Tetherow moved from New York to Pennsylvania and was incardinated into the Diocese. In 2005 he pled guilty to child pornography offenses in Pennsylvania.
10. This Court, as a court of general jurisdiction, has subject matter jurisdiction over this action.
11. Venue in the County of New York is proper pursuant to NY CPLR § 503.

Facts

Sexual Abuse in the Scranton Diocese and Father Robert J. Gibson.

12. As is now well-known, child sex abuse by Catholic priests was widespread, resulting in major sex abuse scandals involving Catholic Dioceses around the world, including those in Boston, Los Angeles, Philadelphia, and many other cities.

13. For many years, however, the scope of the Catholic child sex-abuse epidemic was unknown.

14. Thanks to an investigation in 2002 by the Boston Globe's "Spotlight" team, made more famous by the 2015 film *Spotlight*, the public is now aware that thousands of children have been sexually abused by Catholic priests, and that many of those predator priests were protected by Catholic officials.

15. The Scranton Diocese was no different.

16. Throughout the history of the Scranton Diocese, at least 59 clerics associated with the Diocese have been accused of sexual misconduct and/or abuse.

17. The Scranton Diocese has thus been aware of the risk of sexual abuse by its clerics for decades, well before the sexual abuse of the Plaintiff, which is described herein.

18. Sexual abuse by Diocesan clergy was a known, preventable hazard, which the Diocese failed to respond to.

19. One of the Diocese's worst priest-offenders, and the Plaintiff's abuser, was Scranton Diocesan priest Father Robert J. Gibson ("Gibson").

20. Gibson was ordained as a Scranton Diocesan priest in 1958.

21. Thereafter, Gibson served in numerous Scranton Diocese parishes, including:

- a. Camp St. Andrew in Tunkhannock, PA from June 1958 – October 1958;
- b. St. Paul in Scranton, PA from October 1958 – September 1965;
- c. St. Matthew in Stroudsburg, PA from September 1965 – September 1968;

- d. St. Luke in Stroudsburg, PA from September 1968 – January 1974;
- e. Our Lady Queen of Peace in Broadheadsville, PA from January 1974 – September 1982;
- f. St. John Bosco in Conyngham, PA from September 1982 – January 1983;
- g. St. Bernadette in Canadensis, PA from January 1983 – January 1995 (he resigned in 1995 and was on leave from January 1995 – August 1995);
- h. St. Ignatius in Kingston, PA from August 1995 – 1997; and,
- i. In 1998 his faculties were removed.

22. Gibson began sexually abusing children early in his tenure as a Diocese priest, well before Plaintiff was abused.

23. Gibson was not particularly good at “covering his tracks” or being discrete while he was with his victims.

24. In fact, other employees and agents of the Diocese observed or were aware of young boys spending the night with Gibson in the rectory or on various excursions.

25. In 1970 or 1971, Diocese priest Father John Bendik even walked in on Gibson sexually abusing a child.

26. Throughout Bendik’s tenure with the Diocese, he also became aware of other priests abusing children, and was thus on notice of the danger such clergy posed to children.

27. As such, the Diocese had actual or constructive knowledge of Gibson’s abuse of children years prior to Plaintiff’s abuse.

28. Upon information and belief, multiple other Diocesan officials and/or agents knew Gibson was engaged in inappropriate behavior children, before, during, and after Plaintiff’s abuse.

29. Then, from November 1973 to June 1974, Gibson sexually abused the Plaintiff on average 2-3 times a week.

30. Plaintiff's sexual abuse took place in multiple locations, including, but not limited to: Our Lady Queen of Peace in Brodheadsville, PA; Gibson's car; Plaintiff's school; in New York; and in Florida.

31. Some of Gibson's most heinous and sadistic sexual abuse of the Plaintiff occurred in New York City.

32. Toward the end of Plaintiff's 1973-74 school year, Gibson convinced Plaintiff's mother to allow Gibson to take Plaintiff to New York City for two nights.

33. Upon information and belief, the Diocese knew Gibson took Plaintiff and/or other young parishioners to New York.

34. Gibson and Plaintiff checked into the City Squire Hotel on 57th Street.

35. While in their hotel room Gibson sexually abused the Plaintiff so violently the Plaintiff vomited.

36. Like other Catholic dioceses, the Scranton Diocese transferred Gibson to protect Gibson and the Diocese instead of the children of the Diocese, including the Plaintiff.

37. At no time did the Scranton Diocese make Plaintiff or his family aware of Gibson's history, or of the known risk of abuse posed by him and other Catholic clergy.

38. Gibson used his position with the Diocese to sexually abuse the Plaintiff.

39. The Diocese held Gibson out to the Plaintiff and his family as the Diocese's agent, who had been appropriately vetted, screened, and approved.

40. The Plaintiff and his parents reasonably relied on the acts and representations of the Diocese and its agents regarding Gibson.

41. The Plaintiff and his parents implicitly trusted Gibson due to Gibson's relationship to the Diocese.

42. The Scranton Diocese's actions and omissions herein were willful, wanton, and/or reckless.

43. As described, Gibson sexually abused the Plaintiff, in addition to numerous other children.

44. As a direct result of the Defendant's conduct described herein, Plaintiff suffered and will continue to suffer as follows:

- a. Severe and permanent emotional distress, including physical manifestations of emotional distress;
- b. Deprivation of the full enjoyment of life;
- c. Expenses for medical and psychological treatment, therapy, and counseling; and,
- d. Loss of income and/or loss of earning capacity.

Causes of Action

First Cause of Action

Negligent Hiring, Negligent Retention, Negligent Supervision

45. Plaintiff repeats and re-alleges every allegation set forth throughout this Complaint as if fully set forth herein.

46. Defendant owed a duty of care to all minor persons, including Plaintiff, who were likely to come in contact with Gibson in his role as priest, counselor, trustee, director, officer, employee, agent, servant and/or volunteer of the Defendant.

47. Defendant owed a duty of care to all minor persons, including Plaintiff, to ensure Gibson did not use his position to injure minors by sexual assault, abuse, and/or sexual contact.

48. Defendant had an express and/or implied duty to provide a reasonably safe environment for Plaintiff and assumed the duty to protect and care for him.

49. Defendant negligently hired, retained, and supervised Gibson though they knew or should have known that Gibson posed a threat of harm to minors.

50. Defendant knew or should have known of Gibson's propensity for sexual assault, abuse, and/or sexual contact with minors, the same conduct which caused Plaintiff's injuries.

51. Defendant knew or should have known of Gibson's propensity for sexual assault, abuse, and/or sexual contact with minors prior to, or at the time of, Plaintiff's injuries.

52. The Plaintiff's sexual abuse by Gibson was foreseeable, *i.e.*, Defendant were on notice of prior similar incidents and Plaintiff's sexual abuse was the proximate result of Defendant's negligent hiring, retention, and supervision of Gibson.

53. Gibson's acts described herein were undertaken, and/or enabled by, and/or during the course, and/or within the scope of Gibson's employment, appointment, assignment, and/or agency with Defendant.

54. Defendant took no precautions to prevent Plaintiff's injuries.

55. Defendant failed to take reasonable precautions to prevent Plaintiff's injuries.

56. Defendant gave improper or ambiguous orders or failed to make proper regulations, and/or employed improper persons or instrumentalities in work involving risk of harm to others.

57. Defendant failed adequately to supervise the activities of Gibson.

58. Defendant failed to protect against or warn the Plaintiff or his family of the known risk of priest abuse within the Diocese.

59. Defendant permitted, and/or intentionally failed and/or neglected to prevent, negligent and/or grossly negligent conduct and/or allowed other tortious conduct by persons,

whether or not their servants and/or agents and/or employees, upon premises or with instrumentalities under their control.

60. Defendant allowed the acts of omission and/or commission and/or any or all of the allegations set forth in this Complaint to occur.

61. Defendant's actions were negligent, grossly negligent, willful, wanton, malicious, reckless, and/or outrageous in their disregard for the rights and safety of Plaintiff.

62. As a direct and proximate result of Defendant's actions and omissions, Plaintiff suffered and will continue to suffer injuries, as described herein.

63. By reason of the foregoing, the Defendant is liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

**Second Cause of Action
Negligence/Gross Negligence/Recklessness**

64. Plaintiff repeats and re-alleges every allegation set forth throughout this Complaint as if fully set forth herein.

65. Defendant owed Plaintiff, a minor at the relevant time of abuse, a duty to protect him from Gibson and the consequential damages, both prior to and/or subsequent to Gibson's misconduct.

66. Defendant knew, should have known, or were negligent in not knowing, of Gibson's propensity for sexual assault, abuse, and/or sexual contact with minors and that Gibson posed a threat of sexual abuse to children.

67. Defendant's actions were negligent, grossly negligent, willful, wanton, malicious, reckless, and/or outrageous in its disregard for the rights and safety of Plaintiff.

68. As a direct and proximate result of Defendant's actions and omissions, Plaintiff suffered and will continue to suffer injuries, as described herein.

69. By reason of the foregoing, the Defendant is liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

**Third Cause of Action
Breach of Non-Delegable Duty**

70. Plaintiff repeats and re-alleges every allegation set forth throughout this Complaint as if fully set forth herein.

71. Plaintiff, as a vulnerable minor, was in the care and under the supervision of the Defendant.

72. There existed a non-delegable duty of trust and protection between Plaintiff and the Defendant.

73. Defendant was in the best position to prevent Plaintiff's abuse by Diocesan priests, including Gibson, who was under the supervision, employ, direction and/or control of the Defendant.

74. Defendant breached its non-delegable duty to Plaintiff.

75. Defendant's actions were negligent, grossly negligent, willful, wanton, malicious, reckless, and/or outrageous in their disregard for the rights and safety of Plaintiff.

76. By reason of the foregoing, the Defendant is liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

**Fourth Cause of Action
Breach of Fiduciary Duty**

77. Plaintiff repeats and re-alleges every allegation set forth throughout this Complaint as if fully set forth herein.

78. At all times relevant, there existed a fiduciary relationship of trust, confidence, and reliance between Defendant and Plaintiff that required the Defendant to act in Plaintiff's best interests.

79. Defendant breached its fiduciary relationship with Plaintiff.

80. Defendant's actions were negligent, grossly negligent, willful, wanton, malicious, reckless, and/or outrageous in its disregard for the rights and safety of Plaintiff.

81. By reason of the foregoing, the Defendant is liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

**Fifth Cause of Action
Negligent Infliction of Emotional Distress**

82. Plaintiff repeats and re-alleges every allegation set forth throughout this Complaint as if fully set forth herein.

83. Plaintiff, as a vulnerable minor, was in the care and under the supervision of the Defendant, and thus Defendant owed Plaintiff a duty of care.

84. By reason of the foregoing, Defendant breached that duty of care.

85. Defendant unreasonably endangered the Plaintiff's physical safety, and/or caused the Plaintiff to fear for his own safety.

86. As a direct result of Defendant's conduct heretofore described, Plaintiff suffered severe emotional harm and distress, as described herein.

87. Defendant's actions were negligent, grossly negligent, willful, wanton, malicious, reckless, and/or outrageous in their disregard for the rights and safety of Plaintiff.

88. By reason of the foregoing, the Defendant is liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

**Sixth Causes of Action
Intentional Infliction of Emotional Distress**

89. Plaintiff repeats and re-alleges every allegation set forth throughout this Complaint as if fully set forth herein.

90. Defendant's conduct, as heretofore described, was so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.

91. Defendant intended to cause, or disregarded a substantial probability of causing, severe emotional distress in Plaintiff.

92. Defendant willful, wanton, and/or reckless conduct caused the Plaintiff severe emotional distress.

93. As a direct result of Defendant's conduct heretofore described, Plaintiff suffered severe emotional harm and distress, as described herein.

94. By reason of the foregoing, the Defendant is liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

**Seventh Cause of Action
Breach of Duty in Loco Parentis**

95. Plaintiff repeats and re-alleges every allegation set forth throughout this Complaint.

96. At all times relevant, the Plaintiff was entrusted to the control of the Defendant.

97. At all relevant times, Defendant was acting in loco parentis with respect to Plaintiff.

98. The Defendant owed a duty to Plaintiff, as a child entrusted to them, to act in loco parentis and prevent foreseeable injuries to him.

99. Defendant's conduct, as heretofore described, violated its duties in loco parentis.

100. Defendant's actions were negligent, grossly negligent, willful, wanton, malicious, reckless, and/or outrageous in its disregard for the rights and safety of Plaintiff.

101. By reason of the foregoing, the Defendant is liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

Eighth Cause of Action Nuisance

102. Plaintiff repeats and re-alleges every allegation set forth throughout this Complaint.

103. Defendant continues to conspire and engage and/or has conspired and engaged in efforts to: 1) conceal sexual abuse committed by Defendant's agents against children; and/or 2) protect Defendant's agents from prosecution for their sexual abuse of children; 3) conceal from the public the known dangers posed by its agents; and/or 4) allow known child abusers to live freely in the community unknown to the public.

104. The conduct, deception and concealment by Defendant has knowingly and/or recklessly created and/or maintained a condition which unreasonably endangers the safety and health of a considerable number of persons, including, but not limited to, children and residents in the Diocese of Scranton and other members of the general public.

105. Defendant's failure to report multiple allegations of sexual assault and abuse of children to proper authorities knowingly and/or recklessly endangered the safety and health of a considerable number of persons by allowing child molesters to avoid prosecution and remain living freely in unsuspecting communities.

106. These child molesters, known to the Diocese but not to the public, pose(d) a threat of additional abuse to a considerable number of members of the public and Plaintiff.

107. Defendant's deception and concealment of sexually abusive clerics was and continues to be done with full awareness and conscious disregard of the injurious conditions created and the corresponding risk to the public and individuals in the communities where credibly accused molesters are present, including, but not limited to Plaintiff.

108. It offends the public morals in that the general public and Plaintiff cannot trust Defendant to warn parents of the presence of the current and/or former credibly accused molesters, nor to identify their current and/or former credibly accused molesters, nor to disclose said credibly accused molesters' assignment histories, nor to disclose their patterns of conduct in grooming and sexually assaulting children, all of which create an impairment of the safety and welfare of children in the neighborhoods where Defendant conducted, and continues to conduct, its business.

109. The unreasonable, knowing and reckless conduct, deception and concealment by Defendant was and continues to be especially injurious to Plaintiff's health as Plaintiff was sexually abused by Defendant's agent.

110. The unreasonable, knowing and reckless conduct, nuisance, deception and concealment by Defendant was especially injurious to Plaintiff's health and wellbeing.

111. Plaintiff suffered and continues to suffer particular and peculiar harm as a result of the Diocese's knowing and reckless concealment of clerics credibly accused of sexually molesting minors.

112. Defendant acted unreasonably by knowingly and/or recklessly creating or maintaining a condition which endangered the safety or health of a considerable number of persons with a conscious disregard for Plaintiff's rights.

113. By reason of the foregoing, the Defendant is liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

JURY DEMAND

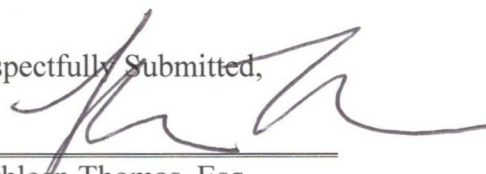
114. Plaintiff demand a trial by jury on all issues so triable.

WHEREFORE Plaintiff demands judgment against the Defendant on each cause of action as follows:

- a) Awarding compensatory damages in an amount to be proved at trial, in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction;
- b) Awarding punitive damages to the extent permitted by law;
- c) Awarding prejudgment interest to the extent permitted by law;
- d) Awarding costs and fees of this action, including attorneys' fees, to the extent permitted by law; and
- e) Awarding such other and further relief as to this Court may seem just and proper.

Dated: August 26, 2019
New York, New York

Respectfully Submitted,



Kathleen Thomas, Esq.

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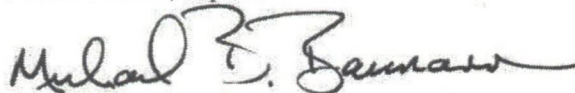
Attorneys for Plaintiffs

VERIFICATION

STATE OF VIRGINIA)

COUNTY OF CHESAPEAKE) ss:

Michael B. Baumann, being duly sworn, deposes and says: That he is a plaintiff in this action; that he has read the foregoing Complaint and knows the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, deponent believes it to be true.

Michael B. Baumann

[Name]

Sworn to before me this
22nd day of August 2019.

NOTARY PUBLIC